Krishnan Nambiar a/l G Perabakaran (a minor suing through G Perabakaran a/l Govindan) & Ors v Dr P Mahendran & Anor

HIGH COURT (MELAKA) — CIVIL SUIT NO 22–253 OF 1999
LOW HOP BING J
19 NOVEMBER 2003

Civil Procedure — Trials — Separate trials — Conduct of proceedings — Medical negligence — Whether there were separate issues to be tried — Whether separate trials to be conducted — Rules of the High Court 1980 O 33 rr 2, 3(2), O 37, O 92 r 4

The plaintiffs brought a suit against the defendant, alleging medical negligence. During the trial, the defendants contended that the trial should proceed to determine both the question of liability and quantum in one and the same proceedings, and not separately. In absence of a court order, the defendants submitted that the plaintiffs did not apply nor intend to proceed with separate trials on liability and quantum. It was added that the second plaintiff had given evidence in chief regarding damages, but failed to plead the sum claimed under each item of special damages, besides failing to make discovery of any document relating to expenses incurred. The defendants concluded that if the plaintiffs wish to now apply for an order for separate trials, they must state the grounds for such order and the reasons for the delay in making the application. The plaintiffs contended that the court had the jurisdiction to try issues of liability and quantum separately, on the basis of O 33 r 2, O 37 and O 92 r 4 of the Rules of the High Court 1980; and submitted that there would be no prejudice to the defendants if the issues of liability and damages were tried separately and that the trial has so far proceeded as such.

Held, ordering the issues to be heard separately:

In the hearing of a suit where the issues of liability and quantum are pleaded in the plaintiffs' claim, the court is empowered to hear and determine liability first, thereby leaving the issue of quantum to be decided at a later stage. Therefore, the trial herein should be continued on the basis that liability is to be heard and determined first, and that the issue of quantification of damages shall be determined in a separate proceeding should the necessity arise in due course (see paras 10–11).

[**Bahasa Malaysia summary**

Plaintif-plaintif telah memulakan satu guaman terhadap defendan, mendakwa kecuaian perubatan. Semasa perbicaraan, defendan-defendan telah menegaskan bahawa perbicaraan hendaklah dimulakan untuk menentukan kedua-dua persoalan liability; dan kuantum dalam satu prosiding yang sama, dan bukan secara berasingan. Dengan ketiadaan perintah mahkamah, defendan-defendan telah berhujah bahawa plaintif-plaintif tidak memohon maupun berniat untuk meneruskan dengan perbicaraan berasingan berhubung liabiliti

dan kuantum. Ia menambah bahawa plaintif kedua telah memberikan keterangan utama berhubung ganti rugi, tetapi gagal untuk memplidkan jumlah yang dituntut di bawah setiap butiran ganti rugi khas, selain daripada gagal untuk membuat pendedahan apa-apa dokumen berkaitan dengan perbelanjaan yang ditanggung. Defendan-defendan membuat kesimpulan bahawa jika plaintif-plaintif berhasrat sekarang untuk memohon satu perintah untuk perbicaraan berasingan, mereka perlu menyatakan alasan-alasan untuk perintah sedemikian dan sebab-sebab kelewatan membuat permohonan tersebut. Plaintif-plaintif menegaskan bahawa mahkamah mempunyai bidang kuasa untuk mendengar persoalan-persoalan liabiliti dan kuantum secara berasingan, berdasarkan A 33 k 2, A 37 dan A 92 k 4 Kaedah-Kaedah Mahkamah Tinggi 1980; dan berhujah bahawa tiada prejudis akan berlaku ke atas defendan-defendan jika persoalan-persoalan liabiliti dan ganti rugi didengar secara berasingan dan bahawa perbicaraan tersebut telahpun bermula.

Diputuskan, memerintah persoalan-persoalan didengar berasingan:

Dalam satu perbicaraan guaman di mana persoalan-persoalan liabiliti dan kuantum diplidkan dlam tuntutan plaintif, mahkamah mempunyai kuasa untuk mendengar dan menentukan liabiliti dahulu, dan meninggalkan persoalan kuantum diputuskan kemudian. Oleh itu, perbicaraan di sini hendaklah diteruskan berdasarkan liabiliti didengar dan ditentukan dahulu, dan persoalan pengkuantitian ganti rugi hendaklah ditentukan dalam satu prosiding berasingan jika keperluan timbul (lihat perenggan-perenggan 10–11).]

Notes

For cases on separate trials, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue) para4206.

Cases referred to

Coenen v Payne & Anor, Payne v Coenen [1974] 2 All ER 1109 (folld)
Federal Insurance Co v Nakano Singapore (Pte) Ltd [1992] 1 SLR 390 (refd)
Hawkins v New Mendip Engineering Ltd [1996] 3 All ER 228 (folld)
Healey v A Waddington & Sons [1954] 1 All ER 861 (folld)
Smith & Co v Hargrove & Co [1886] QBD Vol XVI 183 (folld)
Stevens v William Nash Ltd [1966] 1 WLR 1550 (refd)
Thanaraj a/l Manikam & Ors v Lower Perak Tamil Co-operative Society [1997] 4 MLJ 82 (refd)

Legislation referred to

Rules of the High Court 1980 O 33 rr 2, 3(2), O 37, O 92 r 4.
Rules of the Supreme Court [UK] O 33 r 4(2)

Srimurugan (M Manoharan & Co) for the plaintiffs.
PS Ranjan (Manmohan S Dhillon with him) (PS Ranjan & Co) for the defendants.

Low Hop Bing J:

Decision of the court

[1] The question for decision by me may be formulated as follows:

> In a trial based on alleged medical negligence, in which liability and quantum have been raised in the plaintiffs claim, should the trial be more appropriately proceeded with by hearing and determining the issues of liability and quantum jointly or separately?

[2] Order 33 r 2 provides for the time etc of the trial of questions or issues in the following words:

> The Court may order any question or issue arising in a cause or matter, whether of fact or law or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

[3] Further O 33 r 3(2) provides that in any action begun by writ, different questions or issues may be ordered to be tried by different modes of trial and one or more questions or issues may be ordered to be tried before the others.

[4] These rules serve the purpose of saving unnecessary costs and time: see the judgment of Chan Sek Keong J (as he then was) in *Federal Insurance Co v Nakano Singapore (Pte) Ltd* [1992] 1 SLR 390, at p 394, which was followed in *Thanaraj a/l Manikam & Ors v Lower Perak Tamil Co-operative Society* [1997] 4 MLJ 82.

[5] The above rules have conferred upon the court unfettered discretion to direct that an issue be tried before, at or after the trial of the cause or matter and to give directions (see pp 2275 and 2295 of *Malaysian High Court Practice* MLJ 1998 Desk Ed Vol 1).

[6] In my view, it is trite law that in the hearing of a suit where the issues of liability and quantum are pleaded in the plaintiffs claim, the court is empowered to hear and determine liability first, thereby leaving the issue of quantum to be decided at a later stage: *Coenen*; *Smith*, *Hawkins v New Mendip Engineering Ltd* [1996] 3 All ER 228; *Healey v A Waddington & Sons* [1954] 1 All ER 861 (CA) (see p 2296 *Malaysian High Court Practice*).

[7] By way of illustration, in *Coenen*, the plaintiff brought an action for negligence against the defendant claiming damages. The defendant applied for an order under O 33 r 4(2) Rules of the Supreme Court (UK), which is in pari materia with our O 33 r 3(2), for separate trials of the issue of liability and damages. The trial judge refused the application. The defendant's appeal was allowed by the Court of Appeal. Lord Denning MR observed that there was a strong point to be made in favor of separate trials for liability and damages and that wherever it is just and convenient to do so, the courts should be more ready to grant separate trials than they used to.

[8] In *Smith*, it was held that where liability and damages are disputed in an action, it is a proper exercise of discretion to order the question of liability to be tried first, and the quantum of damages to be postponed.

[9] In *Stevens*, the trial judge rejected the plaintiffs application to decide the issue of liability first and to postpone the assessment of damages to a later date, and decided that both the issues of liability and damages should be proceeded together. On appeal, Winn LJ observed, obiter, that the better course in that particular action for a personal injury claim might have been better for the trial judge to have decided to try the issue of liability and to have postponed the quantification of damages.

[10] In my view, the judicial trend in respect of the trial of the suit before me is quite settled, ie it is more appropriate to hear and determine the issue of liability first and to leave the quantification of damages to a separate proceeding.

[11] On the foregoing grounds, I order that the trial herein should be continued on the basis that liability is to be heard and determined first, and that the issue of quantification of damages shall be determined in a separate proceeding should the necessity arise in due course.

[12] Costs in the cause.

Issues to be dealt in separate trials.

Reported by R Geetha